

**EXHIBIT “K”  
(PART II)**

155

1 riding the foot switch and inadvertently depress  
2 the actuating pedal as her body position shifted  
3 forward as she was reaching into the die area."

4 Did I correctly read that?

5 A. Yes.

6 Q. And is it my understanding that  
7 your -- Do you believe that she was riding the  
8 foot switch?

9 A. Yes.

10 Q. Okay. Is that because of what the  
11 other Corry employees have testified to?

12 MR. ROBINSON: Let me object to the  
13 form of that question.

14 Q. Or is it something else?

15 MR. ROBINSON: I'll object to the  
16 form of that. I don't know if it's an either/or.

17 A. It's a combination of the experience  
18 that I have over the years and the information  
19 that I received reading the discovery material.

20 Q. What experience do you have over the  
21 years that would lead you to believe that on the  
22 day of this accident Ms. Lindquist was riding the  
23 foot pedal -- the foot control? I'm sorry.

24 A. Inadvertent actuations are often the  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

156

1 result of shifting weight where people have their  
2 foot on the foot control and they move from one  
3 position to another, their upper body moves from  
4 one position to another, and their weight shifts  
5 from their heel to their toe on their foot, and as  
6 a result, the foot switch is depressed, and that  
7 only happens when the foot is remaining inside the  
8 foot switch.

9 Q. Would you agree, sir, that  
10 inadvertent activation can occur as a result of  
11 someone's foot going from outside of the foot  
12 control inadvertently going inside to the foot  
13 control and activating the foot pedal in that  
14 mechanism?

15 MR. ROBINSON: Let me object to the  
16 form of that question.

17 A. That's a possibility, depending upon  
18 the type of foot switch that's used for the  
19 operation of the machine.

20 Q. With regard to the foot switch, the  
21 Model 511, would you agree, sir, that inadvertent  
22 activation can occur by -- when someone's foot is  
23 outside of the foot control and inadvertently goes  
24 into the foot control as long as it goes far  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

1 enough back to hit the latch?

2 MR. ROBINSON: Let me object to the  
3 form of the question.

4 A. Well, that qualification changes the  
5 situation that I believe was taking place at the  
6 time of Ms. Linquist's occurrence. Your foot is  
7 not going to go 5 inches into the foot control,  
8 into the housing, release the toe release, and  
9 depress the pedal just by a shifting of the  
10 weight.

11 And there was no reason that I could  
12 see from the testimony that I reviewed that caused  
13 Ms. Lindquist to make any kind of foot movements  
14 when she went from one position to another  
15 retrieving a part and loading it. I saw no  
16 indication that she was moving anywhere.

17 Q. You saw no indication that she was  
18 not moving either; am I correct?

19 MR. ROBINSON: Let me object to the  
20 form of that question.

21 A. Well, I think there's sufficient  
22 information in the testimony that properly led me  
23 to the conclusion that she was staying and  
24 remaining in a stationary position.

SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

1 Q. What testimony did you rely upon to  
2 come to that conclusion that she was remaining in  
3 the station?

4 A. The description of where she was  
5 located, and where the foot switch was, and where  
6 the stool was, and just, you know, what she was  
7 doing at the time led me to believe that she  
8 wasn't moving, she wasn't going anywhere, she was  
9 stationary.

10 Q. Well, explain to me what your  
11 understanding is as to what she was doing at the  
12 time as to make her stationary.

13 A. She was retrieving parts from one  
14 side of her, either the right or the left, it  
15 doesn't specify, putting them into point of  
16 operation, which was very close to her, in front  
17 of her, and then taking the finished part and  
18 moving it to another station to the other side and  
19 just going like this. (Indicating.) And there  
20 was no need for her to move. Maybe reach to the  
21 far side of the pallet to retrieve parts or to  
22 discharge parts, but no need -- on the size part  
23 that I understand was taking place here, a  
24 relatively small part from the photographs that I  
SPANGLER REPORTING SERVICES, INC.

1 was able to view, there was no need for her to be  
2 mobile at all.

3 Q. Do you know whether she was sitting  
4 or standing or leaning?

5 A. No. I think I state this in my  
6 report, that there's no definitive evidence that  
7 shows whether she was standing, leaning or sitting  
8 at the time.

9 Q. Would that have any bearing on your  
10 understanding as to what she was doing with her  
11 foot at the time this accident occurred?

12 A. It may. If there's no -- If she's  
13 sitting, completely sitting, there's no real  
14 weight on her feet. It's really actually more  
15 dangerous that way, but it still doesn't really  
16 change the end result.

17 Q. What is more dangerous?

18 A. Well, if she leaves her foot inside  
19 the HOOD, I think the leaning, shifting of weight,  
20 has more of a likelihood to cause that switch to  
21 be fully released and then reactivated.

22 Q. If you're sitting?

23 A. I think so, yes.

24 Q. But sitting is an appropriate way to  
SPANGLER REPORTING SERVICES, INC.

160

1 operate the press brake at the time she was  
2 injured; am I correct?

3 A. An acceptable --

4 MR. ROBINSON: Objection to form.

5 A. I'm not going to -- I'm sorry.

6 MR. ROBINSON: That's okay.

7 A. I'm not going to say appropriate. I  
8 don't have a problem with people sitting when  
9 they're operating press brakes, if they are  
10 properly safeguarded.

11 MR. ROBINSON: I'm sorry, if they  
12 are what?

13 THE WITNESS: If they are properly  
14 safeguarded.

15 MR. ROBINSON: Thank you.

16 BY MR. HARTMAN:

17 Q. Are you relying upon what the other  
18 Corry employees have said in their testimony to  
19 come to the conclusion that Ms. Lindquist was  
20 riding the pedal?

21 A. Partially.

22 MR. ROBINSON: Yeah. Let me object  
23 to the form. You asked that before, and the  
24 witness responded that there were a number of  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

168

1 Q. Okay. Did you read Ms. Linquist's  
2 deposition where she indicated that she had  
3 removed her foot from the foot pedal?

4 A. Yes.

5 Q. Okay. Did you factor that scenario  
6 into your conclusions?

7 A. Yes.

8 Q. Okay. And would you agree, sir,  
9 that if her foot was outside the foot pedal prior  
10 to this accident and inadvertently went into the  
11 foot pedal and activated the press brake, that  
12 would not have been riding the foot control?

13 MR. ROBINSON: I'll object to the  
14 form of the question.

15 A. If that's a hypothetical that's  
16 based on any kind of fact, yes, but I don't know  
17 that there's any evidence that supports that  
18 hypothetical.

19 Q. Well, the evidence is Ms. Lindquist  
20 said her foot was outside the foot control after  
21 the last time she operated it; am I correct?

22 MR. ROBINSON: Objection, that's  
23 argumentative. That isn't what you just prefaced  
24 your question with. You had the question, the  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342



172

1 MR. ROBINSON: Would you let the  
2 witness take the break that he asked for, Mr.  
3 Hartman, can you give him that professional  
4 courtesy?

5 MR. HARTMAN: Yeah, I'll do that.  
6 I want to prepare my question. I mean, I want to  
7 make sure that it's not misleading.

8 MR. ROBINSON: We'll have time to  
9 do that today.

10 THE VIDEOGRAPHER: Do you agree to  
11 go off the record at the same time?

12 MR. ROBINSON: Yeah.

13 THE VIDEOGRAPHER: Then we are  
14 going off the record. One second, please. We are  
15 off.

16 (Brief recess.)

17 THE VIDEOGRAPHER: You're back on  
18 the record.

19 BY MR. HARTMAN:

20 Q. Sir, I'm going to restate the  
21 question that was proposed to you earlier, and I  
22 want you to listen carefully. I want you to  
23 assume that Ms. Linquist's foot was outside of the  
24 foot control before she began hand-forming the  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

1 part on the press brake and that her foot somehow  
2 inadvertently activated the foot control so as the  
3 die closed in on her hand -- the press closed in  
4 on her hand.

5 Would you agree, sir, that under  
6 those circumstances there's no indication that she  
7 would have been riding the foot control prior to  
8 the activation?

9 MR. ROBINSON: I'll object to the  
10 hypothetical, not based upon facts of record.

11 A. Based upon that hypothetical, I have  
12 to say no.

13 Q. No, what?

14 A. Or yes.

15 Q. Yes?

16 A. Yes.

17 Q. Okay. Yes, there's no evidence of  
18 riding the foot control in that situation; am I  
19 correct?

20 A. Yes.

21 Q. On page 3 of your report under  
22 "Standards and Regulations," it says: "The  
23 American National Standards Institute is a private  
24 organization that is in the business of providing  
SPANGLER REPORTING SERVICES, INC.

176

1 merely say by adopting it that that standard has  
2 met their procedural requirements so that they can  
3 say it's theirs now?

4 A. The operative term is "approve," not  
5 adopt, approve.

6 Q. Okay. So when ANSI approves a  
7 standard, they're not approving the substance of  
8 the standard, they're approving the procedure by  
9 which the standard was developed?

10 A. Correct.

11 Q. ANSI doesn't write standards and  
12 evaluate the standards from a substantive basis?

13 A. Correct.

14 Q. Are you aware that ANSI now is  
15 moving further away from their standards?

16 MR. ROBINSON: Object to the form  
17 of the question.

18 A. I don't understand what you mean by  
19 that question.

20 Q. Mr. Switalski indicated that ANSI is  
21 now trying to move out of the standards business  
22 because they don't want liability for standards  
23 that have been approved by them; are you aware of  
24 that?

SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

1 A. No.

2 Q. Was it more dangerous?

3 A. No.

4 Q. Would it be safer in circumstances?

5 MR. ROBINSON: Object to the form  
6 of the question.

7 A. Yes.

8 Q. Was the gated foot control to --  
9 utilized to prevent inadvertent activation of the  
10 foot control?

11 A. Yes.

12 Q. If the gate is in place and the  
13 operator is not riding the pedal, does the gate  
14 work to inhibit inadvertent activation of the foot  
15 control?

16 A. Yes.

17 MR. ROBINSON: Objection to the  
18 form.

19 A. Yes, but, you know, sistering to  
20 your previous question, is it safer, yes, in some  
21 respects; it's more dangerous also in some  
22 respects, too. So they balance itself -- it  
23 balances itself.

24 Q. It's more dangerous because of why?  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

1 machine, but if the machine is properly  
2 safeguarded, you're not going to get an individual  
3 injured.

4 Q. Is it your testimony today that a  
5 properly safeguarded machine cannot cause injury  
6 to anyone through an inadvertent activation?

7 A. Of course not. That's not what I've  
8 said all day long.

9 Q. Okay. So a properly guarded machine  
10 can cause injury to the operator in certain  
11 circumstances; am I correct?

12 MR. ROBINSON: I'll object to the  
13 form.

14 A. Not only the operator. You just  
15 said it before, you said it could be anybody, and  
16 that's a true statement.

17 Q. The operator --

18 A. So don't just narrow it down to the  
19 operator.

20 Q. Okay. Or the operator could be  
21 injured; am I correct?

22 A. Yes.

23 Q. The person -- A coworker could be  
24 injured, correct?

SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

196

1 MR. ROBINSON: What does it do?

2 MR. HARTMAN: Yes.

3 MR. ROBINSON: It preserves the  
4 objection to asked and answered.

5 MR. HARTMAN: Oh, okay.

6 MR. ROBINSON: So once you've  
7 already gotten your answer that you're not  
8 satisfied with, if you ask it again and the  
9 witness says something different, then the law  
10 doesn't allow that trap to occur, to answer your  
11 legal question.

12 MR. HARTMAN: It wasn't a trap.

13 THE VIDEOGRAPHER: Excuse me, can  
14 we go off the record for one second, please.

15 (Brief recess.)

16 THE VIDEOGRAPHER: You're back on  
17 the record.

18 BY MR. HARTMAN:

19 Q. Sir, are you aware of individuals  
20 being injured when there was proper point of  
21 operation protection on press brakes?

22 MR. ROBINSON: Same objection.

23 A. Yes.

24 Q. Do you -- Today can you describe any  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

1           Q.    Would you agree that with regard to  
2   the brake press, when it's sold in conjunction  
3   with a foot control, that both the brake press and  
4   the foot control should be designed so as to  
5   inhibit to the extent feasible inadvertent  
6   activation?

7                   MR. ROBINSON:  I'll object to the  
8   form of that question.

9           A.   No.  There's no practical way for a  
10   supplier of a press brake to do that and ensure  
11   that that is -- ensure that that gets done once  
12   the machine is put in operation.

13           Q.   Okay.  Would you agree that, when a  
14   foot control is supplied with a press brake, that  
15   the foot control should be designed so as to  
16   inhibit to the extent feasible inadvertent  
17   activation?

18                   MR. ROBINSON:  Objection to the  
19   form.

20           A.   That's part of the requirements in  
21   the ANSI standard.  Yes.

22           Q.   And is inadvertent activation of a  
23   foot control ever a good thing?

24                   MR. ROBINSON:  Objection to the  
                    SPANGLER REPORTING SERVICES, INC.

1 form.

2 A. No.

3 Q. Would you agree, sir --

4 A. I think that's a -- No, I have to  
5 say no to that question, but -- yeah, that's no.

6 Q. Would you agree that, had not  
7 Ms. Lindquist inadvertently activated the foot  
8 control on the date of her accident, she wouldn't  
9 have suffered the injuries she had?

10 MR. ROBINSON: Objection to the  
11 form.

12 A. Say that again.

13 Q. Would you agree, sir, that had not  
14 Ms. Lindquist inadvertently operated the foot  
15 control on the day of her accident, she wouldn't  
16 have sustained the injuries she sustained?

17 MR. ROBINSON: Same objection.

18 A. If she had not inadvertently  
19 actuated the foot switch, the machine would not  
20 have cycled, no.

21 Q. And she wouldn't have been injured,  
22 correct?

23 A. Correct.

24 Q. And if there was a gate on the foot  
SPANGLER REPORTING SERVICES, INC.



200

1 control that she was utilizing that day and that  
2 gate had operated so as to prevent her from  
3 inadvertently activating the foot control, she  
4 wouldn't have had the injuries she has today; am I  
5 correct?

6 MR. ROBINSON: I'll object to the  
7 form of the question.

8 A. No, I don't believe that. The gate  
9 serves the same purpose as the toe release. We  
10 really don't know whether the foot switch on the  
11 day of the operation had a toe release or not. A  
12 lot of people are speculating about that, but, you  
13 know, whether there was a toe release or whether  
14 there was a gated foot switch or whether it was a  
15 foot switch with neither, I think the likelihood  
16 of it happening is all the same because I think  
17 her foot was there inside the switch.

18 Q. Sir, if you assume that  
19 Ms. Lindquist testified accurately when she said  
20 her foot was outside of the foot control before  
21 the activation of the machine that caused her the  
22 injury, and there was a gate on the foot control,  
23 and the gate served its purpose so as to prevent  
24 or inhibit inadvertent activation, would you agree  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

201

1 under that set of circumstances this accident  
2 would not have occurred?

3 MR. ROBINSON: Objection to the  
4 form of the question.

5 A. Well, there's no arguing that. I  
6 mean, given that very narrow, specific set of  
7 circumstances and assuming that the gate performed  
8 its function, you're making a lot of assumptions,  
9 but you have to agree with that, yes.

10 Q. Well, the gate's intended function  
11 is to prevent the foot from going in the foot  
12 control inadvertently; am I correct?

13 A. Yes, and we know that that doesn't  
14 always happen to do that.

15 Q. But it does work in a majority of  
16 the situations; am I correct?

17 MR. ROBINSON: Objection.

18 A. But it doesn't always do that.

19 MR. ROBINSON: Please, objection.

20 Q. But I'm asking --

21 MR. ROBINSON: Hold on.

22 MR. HARTMAN: Go ahead.

23 MR. ROBINSON: I want to make sure  
24 there's an objection to the form of that question.  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

1 BY MR. HARTMAN:

2 Q. Well, would you agree, sir, that  
3 nothing always happens?

4 A. That's right.

5 MR. ROBINSON: I'll object to the  
6 form of that question, and it's also argumentive.

7 Q. Would you agree that no safety  
8 feature always works?

9 MR. ROBINSON: Objection to the  
10 form.

11 A. I can't answer that question.  
12 That's a pretty broad -- Given time, I could  
13 probably come up with some safety feature that's  
14 always functional, always works.

15 Q. But none off the top of your head  
16 today, correct?

17 A. Not right off the top of my head,  
18 no.

19 Q. Okay. And the intended function of  
20 the --

21 A. Acknowledging that you guys need to  
22 get airplanes out of here too.

23 Q. Well, I'm going to ask you, the  
24 intended function of the gate on the foot control  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

203

1 is to prevent the foot from inadvertently sliding  
2 into the foot control, correct?

3 MR. ROBINSON: I'll object to the  
4 form of the question and the term "prevent."

5 A. The intent is to minimize  
6 inadvertent actuation of the foot switch, the same  
7 as the toe release is to minimize inadvertent  
8 actuation.

9 Q. And if you have a toe release and a  
10 foot control -- Strike that.

11 If you have a toe release and a gate  
12 on a foot control, there's two means that would be  
13 utilized to prevent inadvertent activation of the  
14 foot control; do you agree?

15 MR. ROBINSON: Object to the form.

16 A. Yes, just like there's two means to  
17 encourage riding of the foot switch.

18 Q. But you have no evidence or no  
19 research that shows that that occurs on that  
20 particular foot switch; do you?

21 MR. ROBINSON: I'll object to the  
22 form of the question. It ignores all of his prior  
23 testimony. It's been asked and answered.

24 THE WITNESS: I'm sorry?  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

1 Q. I understand that. But if the foot  
2 switch was defective, assuming that it was, OSHA  
3 wouldn't cite Heim; would they?

4 MR. ROBINSON: Object to the form  
5 of the question.

6 A. No.

7 Q. OSHA just cites the employer, they  
8 don't go cite the manufacturers of machinery; do  
9 they?

10 A. No. We talked about that earlier  
11 this morning.

12 Q. Just clarifying it with regard to  
13 this specific provision. So the fact that OSHA  
14 cited Corry for certain violations is not an  
15 indication that the Heim press brake was safe or  
16 not safe --

17 MR. ROBINSON: I'll object to  
18 the --

19 Q. -- in its design?

20 MR. ROBINSON: I apologize for  
21 interrupting. I'll object to the form of the  
22 question.

23 A. That's correct. It's relative to  
24 the use of the machine on the day of the Lindquist  
SPANGLER REPORTING SERVICES, INC.

1 safer means of operating the machinery, correct?

2 A. Correct.

3 Q. Next paragraph, you say: "The facts  
4 of this case require us to return to the  
5 discussion of press brakes. Ms. Lindquist was not  
6 injured while operating power press." Did I  
7 correctly read that?

8 A. Yes.

9 Q. And that was an important  
10 distinction to you in analyzing this accident, is  
11 that she was operating a press brake, not a power  
12 press; am I correct?

13 A. Yes.

14 Q. Next paragraph, you indicate that  
15 "The evidence shows that a foot switch was  
16 provided with the machine in 1978," correct?

17 A. Yes.

18 Q. Is that still your testimony today?

19 A. Yes.

20 Q. Next sentence says that, "There is  
21 no evidence to indicate what make or model foot  
22 switch was provided at that time"; am I correct in  
23 your statement?

24 A. Yes.  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

1 operation safeguarding device for press brakes,  
2 and when properly adjusted, it prevents the  
3 operator from reaching into the die area. It does  
4 not allow him to get between the dies.

5 Q. So even utilizing that type of  
6 safety device, you would not expect an operator to  
7 put his or her hands in the die area?

8 A. If the pull-back is properly  
9 adjusted, his hands -- his or her hands should not  
10 be able to get between the dies.

11 Q. Would you agree that there are a lot  
12 of -- that there are numerous reports of injuries  
13 occurring to operators who get their hands caught  
14 in the point of operation area?

15 MR. ROBINSON: I'll object to the  
16 form of the question. It's also been asked and  
17 answered. "Numerous" is vague and broad.

18 A. Point of operation injuries do occur  
19 on press brakes.

20 Q. Would you agree that point of  
21 operation injuries occur most typically when a  
22 body part is placed in the die area?

23 MR. ROBINSON: Objection to form of  
24 the question.

SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342

1 A. Yes.

2 Q. And would you agree that most point  
3 of operation injuries occur when an operator  
4 places his or her hands or fingers into the die  
5 area?

6 A. By definition, that's what's going  
7 to happen, yes.

8 Q. What is the National Safety Council?

9 A. It's an organization that's  
10 committed to safety of the -- I can't even say, I  
11 can't really say the average worker in America  
12 because they go into highway safety, and campus  
13 safety, and off-the-job safety. They address all  
14 different kinds of safety-related issues.

15 Q. Is it an authoritative organization?

16 MR. ROBINSON: I'll object to the  
17 form of the question.

18 A. No. I've indicated back earlier  
19 this morning that I didn't feel that National  
20 Safety Council publications are authoritative.

21 Q. Are you aware of any National Safety  
22 Council articles relating to press brake safety  
23 that you would deem authoritative?

24 A. No. The data sheets and the  
SPANGLER REPORTING SERVICES, INC.

PHONE (513) 381-3330 FAX (513) 381-3342